IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO (Ord.) 82 of 2006.

Date of decision: 8th May, 2007.

Sh. Shyam Khanna & others ….Appellants.

Versus

Swaroop Singh and others ……Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellants:	**Mr. Anuj Gupta, Advocate.**
For the Intervenor	**Mr. M.S.Chandel, Advocate General, with Mr. Rajan Dewan, Addl.AG.**
For Respondent No. 2	**Mr.Vinod Thakur,Advocate.**

Dev Darshan Sud, J.(Oral)

This appeal has been preferred by the plaintiffs who are aggrieved by the order passed by the learned trial Court in CMA No. 204-S/6 of 2005, whereby application filed by the plaintiffs, under Order 39 Rules 1 and 2 of the Code of Civil Procedure

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

praying that defendants be restrained from interfering with the management of the Himalayan Education Trust, Shogi and all Institutions under it and a restraint order directing them not to create any obstacle in the functioning of newly appointed trustees, namely plaintiffs 2 to 4 be issued and further defendants be prohibited from interfering in the management and control of the educational institutions being run by plaintiff No. 1.

The application was filed in a suit instituted by the plaintiffs under Section 92 of the Code of Civil Procedure praying that the defendants be removed as trustees, new trustees be appointed with the plaintiffs as its trustees and a permanent prohibitory injunction passed in favour of the plaintiffs restraining the defendants from interfering in any manner in the running of the school etc.

Learned trial Court, after detailed consideration of the facts, dismissed the application holding that prima facie no case for grant of interim

relief was made out by the plaintiffs. Plaintiffs have appealed against the judgment.

During the pendency of the appeal, this Court had passed interim orders to ensure the smooth and proper running of the educational institutions run by the trust.

For the purposes of the present appeal, the bare essential facts are being discussed, more-so in view of the fact that during the pendency of the appeal, the college for physical education as also the Regal International School, both of which are situated at Shogi, have been closed down.

It is by now well settled that grant of interim relief cannot be of a nature which would amount to practically allowing the suit. However, the relief should not be denied merely on the ground that it involves examination of the material on record. This would be true of a situation where the institution is one of a trust whose assets and corpus requires protection. During the course of the submissions which were made while the appeal was being argued, it was brought to the notice of this

Court that the educational institutions have been closed down for various reasons. Learned counsel for the plaintiffs expressed his apprehension that the contesting defendants would misappropriate the funds of the trust as also interfere with the corpus created for the purpose of running the educational institutions. As observed by me and which facts are not disputed, both the educational institutions stand closed. Further, the fact as to whether a public trust exists in terms of Section 92 of the Code of Civil Procedure and the other averments, which have been made in the plaint alleging acts of malfeasance and misfeasance, have to be established by evidence. In the circumstances, this appeal is disposed of with the directions that:

(i) the defendants 1 and 2 will regularly submit before the learned trial Court once every fortnight the accounts of the moneys of the trust;

(ii) they will disclose unto the trial Court the total quantum of the funds and property of the trust, the investments,

if any, made. They will not act in a manner which would frustrate the objects of the trust in running the educational institutions;

(iii) The trust funds and property will not be expended without the permission of the court which shall consider the justification of the expenditure.

(iv) the learned trial Court will make an endeavour to dispose of the suit as expeditiously as possible.

This appeal is disposed of with these directions. The record of the trial Court be sent back immediately. There shall be no order as to costs.

8th May, 2007 (PC) **(Dev Darshan Sud)**
Judge.